

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

RANDY S. DIVELEY)	
Claimant)	
VS.)	
)	
BOB'S SUPER SAVER)	Docket No. 248,538
Respondent)	
AND)	
)	
FIREMAN'S FUND INSURANCE CO.)	
Insurance Carrier)	

ORDER

Respondent requested Appeals Board review of Administrative Law Judge Jon L. Frobish's April 7, 2000, Award. The Appeals Board heard oral argument on September 20, 2000.

APPEARANCES

Claimant appeared by his attorney, M. Doug Bell of Coffeyville, Kansas. Respondent and its insurance carrier appeared by their attorney, David S. Brake of Chanute, Kansas.

RECORD

The Appeals Board has considered the record listed in the Award.

STIPULATIONS

The Appeals Board has adopted the stipulations listed in the Award with one correction. Claimant's stipulated average weekly wage is \$161.86 instead of the 4161.86 set out in paragraph number 8 of the stipulations listed in the Award.

ISSUES

On November 15, 1998, claimant injured his right knee while working for respondent. Respondent provided medical treatment for the right knee injury which included arthroscopic surgery performed by orthopedic surgeon William L. Dillon, M.D., on January 11, 1999. Work disability is not an issue. The parties stipulated to a seven percent permanent functional impairment of the right lower extremity. The Administrative Law Judge awarded 6.14 weeks of temporary total disability compensation and 13.57 weeks of permanent partial disability compensation based on a seven percent permanent partial disability for a scheduled injury to the leg.¹

The Administrative Law Judge also awarded claimant future surgical medical treatment upon application, absent a subsequent intervening event. Further, the Administrative Law Judge ordered respondent to provide for claimant the monthly cost for the continued use of anti-inflammatory medication prescribed by claimant's physician, Dr. Dillon.

Respondent appeals and requests the Appeals Board to review the Award relating only to the issues of future surgical medical treatment and respondent's responsibility to provide claimant with the cost of anti-inflammatory medication.

First, respondent contends any future need that claimant may have for a right knee replacement is not related to his November 15, 1998, work accident. Respondent argues, if claimant does need a future right knee replacement, the need for the replacement is claimant's preexisting progressive degenerative arthritic condition and not the November 15, 1998, work accident. Second, respondent contends the reason claimant is in need of the prescribed anti-inflammatory medication also is not related to the November 15, 1998, work accident but is directly related to claimant's preexisting progressive degenerative arthritic condition.

In contrast, claimant request the Appeals Board to affirm the Award. Claimant contends the November 15, 1998, work-related accident and resulting right knee injury aggravated and accelerated his preexisting degenerative arthritic condition. Therefore, claimant argues the right knee injury is responsible for the eventual total knee replacement and is also the reason he has a continuing need for anti-inflammatory medication.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record, considering the briefs and the parties' arguments, the Appeals Board makes the following findings and conclusions:

Is claimant entitled to future surgical medical treatment?

¹See K.S.A. 1998 Supp. 44-510d(a)(16).

Two qualified orthopedic surgeons testified in this case. Claimant's treating physician, William L. Dillon, M.D., testified that claimant possibly would need a right knee replacement within 10 years. Dr. Dillon related the need for the knee replacement to claimant's November 15, 1998, work-related right knee injury.

Respondent's insurance carrier requested claimant undergo an independent medical examination with orthopedic surgeon Roger W. Hood, M.D., who specialized in hip and knee replacements. In contrast, Dr. Hood testified that claimant would need a knee replacement in the future but the reason for the knee replacement would be the progressive nature of claimant's degenerative arthritis and not the November 15, 1998, work injury.

Respondent's principle concern relating to the Administrative Law Judge's conclusion on the future medical treatment issue is the Administrative Law Judge's finding that future medical would include surgical medical treatment. This would then encompass a future knee replacement. Respondent does not have a problem with future medical treatment, as is customarily included in a final award, to be left open and awarded upon proper application to and approval by the Director. The problem arises because the Administrative Law Judge found claimant was entitled to future surgical medical treatment.

At oral argument before the Appeals Board, both the parties agreed that the Administrative Law Judge's order should be modified to exclude the word surgical. The parties further agreed future medical treatment should be left open. At the time claimant is in need of any future medical treatment related to the November 15, 1998, right knee injury, then the claimant should make a post-award request for such medical treatment to the Director.

Is claimant's need for continued daily anti-inflammatory medication therapy related to his November 15, 1998, work-related right knee injury?

After claimant's January 11, 1999, right knee surgery, Dr. Dillon placed claimant on the anti-inflammatory medication, Lodine. At some time during claimant's post-operative treatment, Dr. Dillon changed the anti-inflammatory medication to Celebrex, a new anti-inflammatory medication that is safer to take on a regular basis for claimant's stomach. Celebrex, like Lodine, is a non-steroidal anti-inflammatory medication specifically for the treatment of osteoarthritis and rheumatoid arthritis.

Dr. Dillon testified he prescribed Celebrex because the medication is necessary for the treatment of claimant's right knee injury. The doctor further testified that claimant would need to take the anti-inflammatory medication until the medication was no longer effective.

Before claimant's right knee injury, claimant had a history of degenerative arthritis. In fact, claimant was seen by Dr. Dillon's physician assistant on July 26, 1994, for left knee complaints. Claimant injured his left knee in 1968 and had a medial meniscectomy also in 1968 as a result of that injury. An x-ray examination in 1994 showed moderate

degenerative disc disease, osteophytes, and a popliteal cyst of the left knee. At that time, claimant was taking Advil for the pain and discomfort in his left knee.

Claimant returned to Dr. Dillon's office with continued left knee complaints on July 9, 1996. At that time, Dr. Dillon examined claimant's left knee. Dr. Dillon, based on his examination and the review of the previous x-rays, diagnosed claimant with moderate to severe degenerative changes at multiple joint compartments of the left knee. The doctor prescribed Voltaren, an non-steroidal anti-inflammatory medication. Dr. Dillon's medical records indicate that claimant only requested one refill of the anti-inflammatory medication, that was on September 11, 1996.

During claimant's regular hearing testimony, he acknowledged, before his right knee injury, he had an degenerative arthritic condition of the left knee. He also testified he knew his left knee needed a replacement at that time. But claimant went on to testify the left knee "pretty well don't bother me no more." Claimant was asked what medication he was taking before the right knee accident for his left knee condition. Claimant replied, "Tylenol".

The Appeals Board concludes, based on Dr. Dillon's and claimant's testimony that claimant's present need for the anti-inflammatory medication Celebrex is related to his work-related right knee injury and surgery. Although the record does establish that claimant took Voltaren, an anti-inflammatory medication, in 1996, the medical records indicate that claimant only refilled the medication on one occasion. Claimant's testimony proves that before his right knee injury his only requirement for pain medication was the over-the-counter Tylenol for his left knee which, at the time of the regular hearing, was not bothering him that much. During Dr. Dillon's deposition, he answered "Yes" to the question, "So the Celebrex is necessary for the treatment of the right knee?"

The Appeals Board is mindful that respondent's medical expert, Dr. Hood, testified the reason claimant needs the Celebrex anti-inflammatory medication is not because of the right knee injury but is now related only to his degenerative arthritic condition. Dr. Hood testified, "He was on anti-inflammatory medicine before he had his injury, he's on it now." But claimant established through his testimony that immediately before his right knee injury his only medication requirement was over-the-counter Tylenol. Claimant testified it was not necessary for him to take an anti-inflammatory medication until after his right knee injury.

Therefore, the Appeals Board concludes that the Administrative Law Judge's finding that respondent should be responsible for cost of claimant's anti-inflammatory medication, Celebrex, is affirmed. The Appeals Board finds that the record supports the conclusion that claimant's need for the anti-inflammatory medication is related to his right knee injury and surgery.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that Administrative Law Judge Jon L. Frobish's April 7, 2000, Award should be, and is hereby, modified as follows:

The Appeals Board affirms the Administrative Law Judge's Award except for the Administrative Law Judge's order entitling claimant to future *surgical* medical treatment. (emphasis added).

The Appeals Board concludes the issue of claimant's entitlement to future medical treatment remains open but will be awarded only upon proper application to and approval by the Director of the Division of Workers Compensation.

All remaining orders contained in the Award are adopted by the Appeals Board.

IT IS SO ORDERED.

Dated this ____ day of September 2000.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: M. Doug Bell, Coffeyville, KS
David S. Brake, Chanute, KS
Jon L. Frobish, Administrative Law Judge
Philip S. Harness, Director